

1
2
3
4
5 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**
6 **OF THE STATE OF CALIFORNIA**
7

8 In the Matter of the Application of:

9 **William Percy**

Precedent Decision No. 01 - 05

10
11
12 A hearing on this application was held on July 20, 2001, in San Diego, California, by
13 Deborah Bain, Hearing Officer, who was assigned to hear this matter by the Executive Officer of the
14 California Victim Compensation and Government Claims Board (Board).

15 The applicant, William Percy, attended the hearing.

16 **Claim History**

17 The application was received on December 29, 2000. The application requested assistance
18 for medical and wage losses arising out of a battery. The application was recommended for denial on
19 the May 15, 2001, consent agenda. A timely appeal was filed and the matter was set for hearing.

20 **Summary of Issues**

21 Staff recommended denial of Mr. Percy's application based on the staff's determination
22 that Mr. Percy had failed to cooperate with the law enforcement agency that investigated the
23 qualifying crime.

24 **Findings of Fact**

25 William Percy testified that he and his former wife, Allison Percy, were married for four
26 years. In February of 2000, she left him. The Percys have two sons: William, age 6, and Jack, age 4.

27 The Percys had been seeing a marriage and family therapist, Maria Villegas, regarding
28 issues involving their divorce. Mr. Percy testified that on November 21, 2000, he attended a therapy
29 session with his boys and former wife. Mr. Percy started to leave with his sons after the therapy

1 session. As he was walking down the stairs, Ms. Pearcy's boyfriend, Michael Rocca, passed him. Mr.
2 Rocca called Mr. Pearcy a "punk." Mr. Pearcy told Mr. Rocca to "back off."

3 Mr. Pearcy left Mr. Rocca on the stairwell and proceeded to the parking lot. He put his son
4 Jack in his car seat. He had just finished buckling his son William in the car when Mr. Rocca came up
5 from behind. Mr. Rocca again called him a "punk," and told him that he was going to "beat his a--."
6 Mr. Pearcy replied, "You aren't going to do anything." Mr. Pearcy went around to the driver's side of
7 the car. Mr. Rocca followed and got "in his face." Mr. Rocca pushed him in the chest. Mr. Pearcy fell
8 down and struck his head on the pavement.

9 Mr. Pearcy testified that when he got up he had "tunnel vision." He immediately put his fist
10 up. He charged at Mr. Rocca. Mr. Rocca charged him. Mr. Rocca grabbed him by his sweatshirt. Mr.
11 Pearcy stated that he tried to swing at Mr. Rocca for protection but could not reach him. Mr. Rocca
12 swung him around. Mr. Pearcy fell and hit his head again. He found that he could not move. He told
13 Ms. Pearcy that he was having difficulty moving. She said he was fine. Ms. Pearcy got in the car with
14 Mr. Rocca and drove off.

15 Mr. Pearcy called the police. After waiting for over an hour, Mr. Pearcy proceeded to the
16 emergency room. The police arrived at the hospital around 11:00 p.m. Mr. Pearcy told them about
17 Mr. Rocca and the incident. His sons were asleep when the officer arrived. The officer did not
18 attempt to wake them for a statement.

19 A November 21, 2000, San Diego Regional Crime report reflects a similar statement of
20 events. The officer noted that Mr. Pearcy had sustained several small abrasions and had a small
21 contusion to the back of his scalp. Mr. Pearcy told the officer that he did not know what his children
22 had seen. However, he thought that they probably saw most of the incident. The officer reported,
23 "Since both kids were asleep, I did not feel the immediate need to wake the children." The officer
24 wrote that Mr. Pearcy definitely wanted Mr. Rocca arrested for battery.

25 Mr. Pearcy sustained a neck strain. Mr. Pearcy testified that for about a week after the
26 incident, he had pain, weakness in his arms, bruises, a sore shoulder, and a bump on his head. He
27 missed two days of work.

28 Mr. Pearcy spoke to San Diego Detective Thomas Boerum between November 21, 2000,
29 and December 5, 2000. He sent the detective a packet of documents pertaining to a pattern of violence

1 on the part of Mr. Rocca and a restraining order that had been issued by Mr. Rocca's ex-wife against
2 Mr. Rocca. Mr. Percy testified that the detective told him that it was the most organized packet that
3 he had ever received.

4 Detective Boerum's report reflects that he "discussed Percy's options in this case and the
5 requirement for him to submit his children, the sole witnesses to the battery, to be used in this case if it
6 is to be prosecuted. Percy said he would think about it and discuss it with the children's therapist. I
7 telephoned Percy after a week went by and left a message. Percy returned my call and left a voice
8 mail stating that he was not going to pursue prosecution in this case because of his children but would
9 seek a civil remedy."

10 Mr. Percy testified that Detective Boerum told him that the only way he would be able to
11 convict Mr. Rocca was if the boys would testify. He spoke to therapist Maria Villegas and asked her if
12 he should have his children testify. Ms. Villegas said it was not a good idea and that it might be
13 traumatic for the children.

14 Mr. Percy also spoke to his attorney. His attorney told him that he used to work in the
15 juvenile court system. His attorney said that he thought the judge would be reluctant to even question
16 the children out of concern for their age. Mr. Percy's attorney said that if the children were questioned
17 it would be hard on them.

18 Mr. Percy also spoke to his mother and his employer, Bob Ross. They both told him that
19 they did not think it would be good for the children to go through a court proceeding.

20 Mr. Percy testified to feeling frustrated by the situation. He did not think it was right that
21 Mr. Rocca would not be punished. However, Mr. Percy did not want to pursue charges if it was going
22 to be traumatic for his children. He called Detective Boerum and told him of his decision not to go
23 forward. Afterwards, Family Court Judge Wesley Adams told Mr. Percy that he made the right
24 decision as "the boys had enough to deal with."

25 The crime impacted Mr. Percy's children. He states that his son Jack told the daycare
26 operator that, "Michael kicked my Daddy to the ground." Mr. Percy observed that after the incident
27
28
29

1 William was grinding his teeth and Jack was having bedwetting problems. He thinks his children need
2 counseling as the result of the incident.¹

3 **Determination of Issues**

4 Government Code section 13964(a) provides that the Board shall approve an application for
5 assistance if a preponderance of the evidence shows that as a direct result of a crime the victim
6 incurred an injury that resulted in a pecuniary loss. Written reports from a law enforcement agency
7 responsible for investigating the qualifying crime may be relied upon. (Cal. Code Regs., tit. 2,
8 § 647.31.)² The applicant has the burden of proving all issues necessary to establish eligibility by a
9 preponderance of evidence. (Reg. § 647.32.) There is sufficient evidence that Mr. Percy was the
10 victim of a battery.

11 A victim is not eligible for program assistance if the victim failed to reasonably cooperate
12 with a law enforcement agency in the apprehension and conviction of a criminal committing the crime.
13 (Gov. Code, § 13964(c)(2).) Completely and truthfully responding to request for information in a
14 timely manner is one element of cooperating with law enforcement. (Reg. § 657.1(e)(2).) The
15 Program has the burden of proving all issues necessary to disqualify an applicant for failing to
16 reasonably cooperate with law enforcement. (Reg. § 647.32(b).)

17 Mr. Percy's testimony appeared to be truthful. Mr. Percy timely reported the incident and
18 the November 21, 2000, police report noted that Mr. Percy desired prosecution. There is no
19 indication that Mr. Percy prevented the officer from questioning his children. On the contrary, the
20 officer stated that since there seemed to be no immediate need, he did not wake the children to
21 question them.

22 Mr. Percy assisted in the prosecution of the case by giving Detective Boerum background
23 information on Mr. Rocca. However, Detective Boerum informed Mr. Percy that the only way Mr.
24 Rocca could be convicted was if the children were questioned and testified. Mr. Percy declined to
25 have his children questioned only after conferring with his therapist, his employer, attorney, and
26 mother. Based on the opinion that it would be too difficult on his children, he declined to have them

27
28 ¹ Mr. Percy has not yet submitted an application on behalf of his sons.

29 ² All regulation citations are to California Code of Regulations, title 2.

testify. The successful prosecution of this case did not rest upon the testimony of a four-year-old or a six-year-old child. There is a high probability that the four-year-old child would not even qualify in court to testify. Any testimony by William would certainly be subject to the claim of bias. The police apparently never attempted to locate any independent witnesses.

Considering all of the evidence, there is insufficient evidence that Mr. Percy failed to reasonably cooperate with law enforcement.³

Order

The application should be allowed and any verified, covered pecuniary losses should be reimbursed.

Date: July 22, 2001

DEBORAH BAIN
Hearing Officer
California Victim Compensation and
Government Claims Board

³ Board staff did not address the issue of whether Mr. Percy's application should be denied on the basis of Mutual Combat. The police report does not assert that this was a case of mutual combat. Further, based on Mr. Percy's testimony, his fighting stance after being thrown to the ground appeared to be instinctive and a defensive response.

1
2
3
4
5
6 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**
7 **OF THE STATE OF CALIFORNIA**
8

9
10 In the Matter of the Application of:

11 **William Percy**
12

Precedent Decision No. 01 – 05

13
14 On September 28, 2001, the California Victim Compensation and Government Claims
15 Board adopted the attached Decision as a Precedent Decision. The Decision became effective on
16 September 28, 2001.
17

18 Date: October 5, 2001

19 _____
20 CATHERINE CLOSE
21 Chief Counsel
22 California Victim Compensation and Government Claims Board
23
24
25
26
27
28
29